



Police and Fire Reform (Scotland) Act 2012

2012 asp 8

PART 1

POLICE REFORM

CHAPTER 10

COMPLAINTS AND INVESTIGATIONS

60 Complaints handling

- (1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.
- (2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.
- (3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.
- (4) Without prejudice to the generality of section 84 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).
- (5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).
- (6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

Status: This is the original version (as it was originally enacted).

61 The Police Investigations and Review Commissioner

- (1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.
- (2) Accordingly—
 - (a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute—

“The Police Investigations and Review Commissioner”,
 - (b) for the title of that section substitute “**The Police Investigations and Review Commissioner**”,
 - (c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.
- (3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

62 General functions of the Police Investigations and Review Commissioner

After section 33 of the 2006 Act, insert—

“33A General functions of the Commissioner

The Commissioner’s general functions are—

- (a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—
 - (i) the handling of relevant complaints; and
 - (ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;
- (b) where directed to do so by the appropriate prosecutor—
 - (i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;
 - (ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);
- (c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and
- (d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).”

63 Investigations under supervision of Lord Advocate or procurator fiscal

After section 41 of the 2006 Act, insert—

“Investigations

41A Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A, must comply with—

- (a) any lawful instruction given by the appropriate prosecutor who issued the direction; and
- (b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

64 Serious incidents involving the police

After section 41A of the 2006 Act (inserted by section 63), insert—

“41B Serious incidents involving the police

- (1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is—
 - (a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—
 - (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and
 - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
 - (b) any other circumstance in or in consequence of which—
 - (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or
 - (ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or
 - (c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.
- (2) But a matter is not a “serious incident involving the police” if it is—
 - (a) a matter—
 - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
 - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or
 - (b) a matter which is being, or has been, investigated—
 - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or

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- (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

65 Investigations of other matters in the public interest

After section 41B of the 2006 Act (inserted by section 64), insert—

“41C Investigation of matters in the public interest

- (1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.
- (2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—
 - (a) a matter—
 - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
 - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;
 - (b) a matter which is being, or has been, investigated—
 - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
 - (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14); or
 - (c) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A.”.

66 Investigations: procedure etc.

After section 41C of the 2006 Act (inserted by section 65), insert—

“41D Investigations: procedure etc.

- (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A as they consider appropriate.
- (2) Regulations may, in particular, make provision—
 - (a) requiring the chief constable or the Authority to refer matters to the Commissioner;
 - (b) about circumstances in which the Commissioner—
 - (i) must, must not or need not carry out an investigation; or
 - (ii) may discontinue an investigation;
 - (c) about the form and procedure of an investigation;
 - (d) imposing restrictions on the extent of any investigation;
 - (e) setting time limits within which matters must be investigated;
 - (f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);

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- (g) for the delegation of functions to the Commissioner.
- (3) Before making regulations under this section, the Scottish Ministers must consult—
 - (a) the Commissioner;
 - (b) the Authority;
 - (c) the chief constable;
 - (d) such persons as appear to them to be representatives of senior officers;
 - (e) such persons as appear to them to be representatives of superintendents (including chief superintendents);
 - (f) the joint central committee of the Police Federation for Scotland; and
 - (g) such other persons as they think appropriate.”.

67 Reports on investigations

After section 41D of the 2006 Act (inserted by section 66), insert—

“41E Reports on investigations

- (1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A.
- (2) The Commissioner must—
 - (a) provide a copy of a report prepared under subsection (1) to—
 - (i) the person (if any) who requested the investigation;
 - (ii) the Authority; and
 - (iii) any other person whom the Commissioner considers appropriate; and
 - (b) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.
- (3) Apart from identifying the Authority or the Police Service, a report must not—
 - (a) mention the name of any person; or
 - (b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

68 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 67), insert—

“41F Investigations: obstruction and contempt

- (1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—
 - (a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or

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in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A; or

- (b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.

- (2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.

69 Complaints against the Commissioner

Before section 43 of the 2006 Act insert—

“42A Complaints against the Commissioner

- (1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner’s staff.
- (2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.

70 Protection from actions for defamation

After section 46 of the 2006 Act, insert—

“46A Protection from actions for defamation

- (1) For the purposes of the law of defamation—
- (a) any statement made by the Commissioner or any of the Commissioner’s staff—
- (i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A;
 - (ii) in communicating with any person for the purposes of such a review or investigation;
 - (iii) in a report on such a review or investigation; or
 - (iv) in a report made under section 43,
- has absolute privilege;
- (b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A has absolute privilege; and
- (c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”.